IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FOURTEENTH DAY OF DECEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION No. 26630 of 2005

Between:

E.Pentaiah Goud

..... PETITIONER

AND

The Prohibition & Excise Superintendent,

Mahaboobnagar, Mahboobnagar District

And another

.....RESPONDENTS

ORDER:

Seeking a Mandamus, declaring the action of the 1st respondent in suspending the license of the petitioner pending enquiry vide proceedings dated 22.07.2005, as illegal and arbitrary, the present writ petition is filed.

Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise.

It is stated that the petitioner is having a TCS toddy shop at Appannapally village, Mahabubnagar Mandal & District and he was granted license bearing No.63, on 06.11.2003 for retail sale of toddy which is valid upto 31.03.2007, by the Prohibition and Excise Superintendent, Mehabubnagar. While so, the shop of the petitioner was inspected on 10.07.2005 at about 7.15 p.m. by the Prohibition and Excise Inspector, Mahabubnagar and Prohibition and Excise Sub-Inspector, Mahabubnagar along with mediators and found one person by name C.Mogulaiah Goud conducting sale of toddy. The said C.Mogulaiah Goud was said to be appointed by the petitioner. The said C.Mogulaiah, on demand, produced license bearing No.63, dated 06.11.2003, and the Excise officials found toddy in six wooden crates each containing 12 bottles and they tested the toddy with the required chemicals in his presence and found that the toddy is free from Chloral Hydrate. Toddy samples were drawn on suspicion that the toddy might have been mixed with any other ingredients, which are harmful to public health and prohibited. Under cover of panchanama, three samples have been drawn and the Station House Officer, Mahabubnagar registered a case vide PCR No.217/05-06, dated 10.07.2005 under Rule 24 of A.P.Excise (Arrack & Toddy Licenses General Conditions) Rules, 1969, and the samples along with case property was sent to the Judicial First Class Magistrate, Mahabubnagar with a request to send one of the samples to the Government Chemical Examiner for Prohibition and Excise Laboratory, Hyderabad for analysis and report. The Government Chemical Examiner, Regional Prohibition and Excise Laboratory, Hyderabad, after testing of said toddy sample, on receipt of the same from the concerned Court, opined that the toddy was adulterated with

Diazepam and Alprazolam. Accordingly, the Government Chemical Examiner, Regional Prohibition and Excise Laboratory, Hyderabad, vide his report dated 19.07.2005 opined that the sample is fermented toddy adulterated with Diazepam and Alprazolam. Basing on the said report, the license of the petitioner was suspended pending enquiry in the interests of public health and interest.

It is stated that as against the said suspension order dated 22.07.2005, the petitioner filed an appeal before the appellate authority on 09.11.2005. I am not inclined to express any opinion as to whether appeal is filed within the time as prescribed under Section 63(1) of the A.P.Excise Act, 1968 (for short 'the Act'). As per Section 63(1) of the Act, against the order passed by the Prohibition and Excise Superintendent of the licenses, appeal lies before the Deputy Commissioner within 45 days from the date of communication of the impugned order. Nothing has been stated in the affidavit as regards to the communication of the impugned order. If the impugned order was communicated to the petitioner by the end of July, 2005, 45 days will expire by 15.09.2005, but the appeal is said to have been filed on 09.11.2005. Having filed alternative remedy of appeal, the petitioner has chosen to question the impugned order dated 22.07.2005 in this writ petition, stating that the suspension of license pending enquiry is against the principles of natural justice and violation of Article 21 of the Constitution of India.

The learned counsel for the petitioner submits that though appeal is pending, there cannot be any bar to question the impugned order.

It is further stated that the learned single Judge of this Court in ***Toddy Tappers Co-operative Society v. Deputy Commissioner of Prohibition and Excise, Enforcement*** held that suspension of the license pending enquiry, without giving notice under Section 31(1) of the Act, is illegal and unwarranted.

I have perused the said judgment. The facts of the said judgment goes to show that in the said case no sample was drawn nor was it sent for chemical analysis. Therefore, the learned Judge of this Court held that the suspension as a measurement of punishment was found fault with.

The petitioner also relied on a judgment of the Division Bench of this Court in ***Goka Bujjamma v. Prohibition and Excise Superintendent,*** based on earlier judgment of the Division Bench of this Court in ***K.Srinivasa Reddy v. Superintendent Prohibition and Excise***, wherein the Division Bench has set aside

the order of suspension and retained the show cause notice for the proposed cancellation of license.

The facts of the ***K.Srinivasa Reddy*** case goes to show that instead of proposing the action of suspending the license, passing final orders suspending the license of the concerned, is contrary to the provisions under Section 31(1) of the Act. I am of the opinion that as the suspension of license was made without giving any notice the Division Bench has rightly held that the suspension is illegal and contrary to the provisions under Section 31(1) of the Act. But the facts of the ***Goka Bujjamma*** case goes to show that the said judgment is contrary to the judgment of the Full Bench of this Court in ***Tappers Co-op.Society Maddur vs. Supdt.of Excise (FB)***. The Full Bench of this Court, in para-44 of the judgment, held that the power of suspension which is concomitant of adjunct is no doubt restricted by the statutory provision under the proviso in question to pass final orders of suspension but that power cannot be said to have been taken away to pass an interim order of suspension not intended to be a penalty but only interim measure to pass effective orders. The said conclusion was arrived at by the Full Bench in view of the fact that no citizen has right guaranteed under Article 19 (1) (g) of the Constitution of India but only a privilege to deal with in accordance with the provisions of the Act and Rules. This Court is also agreeing with the above decision of the Full Bench.

In so far as suspension pending enquiry is concerned, there is no doubt that Section 31 of the Act deals with the power to cancel or suspend license, and under Section 31 (1) of the Act no license or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed. Cancellation of license or suspension as a measure of punishment requires notice under Section 31(1) of the Act.

Under Rule 11 of A.P. Excise (Arrack and Toddy Licenses General Conditions) Rules, 1969, the toddy, which is sold or offered for sale in the shop, shall be unadulterated and mixing any foreign ingredient to the toddy is prohibited. Under Rule 4 of the said Rules, the licensee shall keep the shop open every day during the hours fixed till the expiry of the term of license, unless the closure of the shop is ordered by the competent authority for the period specified by him.

Under Rule 5 of the A.P.Excise (Tapping of Trees and Toddy Shops – Special Conditions of License) Rules, 1969, the licensee shall not mix any toddy

Chloral Hydrate or any other article in the shop or outside, except sugar, nor shall he sell or offer for sale adulterated toddy in any shop. The licensee shall not keep within the premises of the shop Chloral Hydrate or any other article injurious to health, which may be used for adulteration of toddy. Thus, under Section 37 of the Act, adulteration of toddy is not only prohibited but it is also liable for punishment.

Under Section 37 of the Act, whoever sells adulterated toddy is liable to be punished for the first offence for a term which shall not be less than one year but which may extend upto three years and with fine which shall not be less than rupees ten thousand but which may extend upto rupees thirty thousand, and for the second offence, for a term which shall not be less than two years but which may extend upto three years and with fine which shall not be less than rupees fifty thousand but which may extend upto rupees one lakh. Under Section 37-A of the Act, any disability or grievous hurt or death to human beings is caused due to consumption of adulterated toddy, the person, responsible, is liable to be punished for a term which shall not be less than two years but which may extend upto imprisonment for life, and with fine which may extend upto rupees one lakh, and in any other case, with imprisonment for a term which shall not be less than one year, but which may extend upto ten years, and with fine which may extend upto fifty thousand rupees. Thus, serious consequences are contemplated for adulteration of toddy.

It is known fact that adulteration of toddy with Diazepam and Alprazolam affects on the human nervous system making the consumers unfit for the normal activities. The adulterated toddy is not only affected the human nervous system but also make the consumer to be addicted to drinking the adulterated toddy with Diazepam and Alprazolam. Thus, adulteration of toddy is against the public health and public interest and it is a grave crime, which cannot be permitted in the society, as several families are being ruined by drinking. Therefore, I am of the opinion that the Full Bench of this Court in ***Tappers Co-op. Society Maddur*** case, has rightly held that the licensing authority has got ancillary and incidental powers of suspending a license or permit pending enquiry in the circumstances clearly warrant and to avoid public danger. In the instant case, suspension pending enquiry is not substantive measure of punishment, but it is made pending enquiry. Once it came to the notice of the licensing authority that the toddy was found adulterated with dangerous drugs such as Diazepam and Alprazolam, which would affect the human health, suspension pending enquiry cannot be found fault with.

Trading liquor being obnoxious in its nature, no citizen can have fundamental right to carry on business on liquor except in accordance with relevant provisions of the Act and Rules made there under. In the instant case, there are allegations against the petitioner that he has violated the Rule-5 of A.P.Excise (Tapping of Trees and Toddy Shops Special Conditions of Licenses) Rules, 1969 and Rule-11 of A.P.Excise (Arrack and Toddy Licenses General Conditions) Rules 1969 and also terms and conditions of the license, which is not only punishable under Section 37 of the Act, but also his license will be cancelled under Section 31(1) of the Act. However, in this case, the license of the petitioner is suspended pending enquiry as interim measure of punishment but not substantive measurement of punishment by way of final order of suspension.

In so far as other contentions of the petitioner that the Gram Panchayat passed a resolution on 08.07.2005 to close down the toddy shops from 08.07.2005 and accordingly, he closed his shop and the alleged inspection on 10.07.2005 is not correct and he is no way concerned with the case are concerned, I am of the opinion that it is always open for the petitioner to substantiate his contentions in the enquiry proceedings, as a show cause notice was issued to him on 26.11.2005 and enquiry is pending.

I do not see any infirmities legally or otherwise to interfere with the impugned order of suspension pending enquiry. The writ petition is devoid of merit and liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

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V.ESWARAIAH,J

Dated: 14.12.2005

Dsr